

JUL 14 2006

S/N 10/547,535

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	KITTAKA, et al.	Examiner:	A. Ullah
Serial No.:	10/547,535	Group Art Unit:	2874
Filed:	August 31, 2005	Docket:	10873.1764USWO
Title:	WAVEGUIDE ELEMENT USING PHOTONIC CRYSTAL		

CERTIFICATE UNDER 37 CFR 1.6(d):

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark office on July 14, 2006.

By: 

Name: Chieko Rogers

RESPONSE UNDER 37 C.F.R. §1.111

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Office Action dated April 18, 2006. The sole issue raised in the Office Action is a rejection for "same invention" double patenting over U.S. Patent Application Serial No. 10/547,828. Applicants respectfully traverse the rejection.

A rejection for "same invention" double patenting is proper only when the claims in two different applications are coextensive. Independent claim 1 of the present application requires a core formed of a photonic crystal having periodicity in at least two directions perpendicular to the propagation direction of an electromagnetic wave. Independent claim 1 of U.S. Patent Application Serial No. 10/547,828 requires a photonic crystal having refractive index periodicity in one direction. Even if claim 1 of U.S. Patent Application Serial No. 10/547,828 could be considered generic to claim 1 of the present application, the literal scope of claim 1 of U.S. Patent Application Serial No. 10/547,828 covers subject matter that is outside the literal scope of the present claim 1,

i.e. cores having periodicity in only one direction, not two. It is clear that the independent claims of the two applications are not coextensive and therefore the rejection for "same invention" double patenting" is incorrect.

Applicants provide herewith a Terminal Disclaimer over U.S. Patent Application Serial No. 10/547,828 to obviate any potential issues of "obviousness" double patenting. Applicants are not conceding an absence of patentable distinction between the subject matter of the present claims and that of U.S. Patent Application Serial No. 10/547,828.

In view of the above, Applicants request favorable reconsideration of this application in the form of a Notice of Allowance. Applicants also courteously request acknowledgement of the Information Disclosure Statements that have been filed with this application.



Dated: July 14, 2006

Respectfully submitted,

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